

AMENDED IN SENATE JULY 14, 2009

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 489**

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**Introduced by Assembly Member Huffman**

February 24, 2009

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An act to amend Sections 8040, 8041, 8047, 8052, 8053, 8055, 8057, 8058, 8059, 8060, 8061, 8062, 8063, 8064, 8065, 8067, 8068, and 15003 of, to amend the heading of Article 7.5 (commencing with Section 8040) of Chapter 1 of Part 3 of Division 6 of, *to amend and repeal Section 8051 of, to amend, repeal, and add Section 8042 of, and to add Section 8041.5 to, to repeal Section 8051 of, and to repeal and add Section 8042 of, the Fish and Game Code*, relating to commercial fishing.

### LEGISLATIVE COUNSEL'S DIGEST

AB 489, as amended, Huffman. Commercial fishing.

Existing law regulating commercial fishing imposes, or authorizes the imposition of, various license, permit, and registration fees. Existing law requires specified persons to pay commercial fishing fees, referred to as a "landing tax," calculated on the total weight of fish delivered, based on a rate-per-pound schedule applicable to specified aquatic species.

This bill, *on January 1, 2011*, would ~~delete~~ *repeal* that fee requirement and that rate schedule, and, instead, impose a fee calculated as a set percentage of the average ex-vessel price, as defined, established by the Fish and Game Commission for a species of fish. The bill would require the fees to be used by the department for the commercial fishing

program pursuant to specified provisions of law. The bill would make conforming changes to refer to the fee as a “landing fee” instead of a “landing tax.”

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The Department of Fish and Game is responsible for  
4 managing and protecting the state fisheries resources. As part of  
5 that responsibility the department regulates, manages, and oversees  
6 commercial fishing.

7 (b) The Department of Fish and Game receives revenue to fund  
8 regulation, management, and oversight of commercial fishing in  
9 the form of permit fees, licenses, stamps, landing taxes, and the  
10 General Fund.

11 ~~(e) Based on a 2005 report by the Department of Fish and Game,~~  
12 (c) *Based on a 2007 memorandum from the Department of Fish*  
13 *and Game to the Fish and Game Commission*, the revenue received  
14 from the commercial fishing industry covers only 22 percent of  
15 the program costs. The report indicates that the ex-vessel value of  
16 commercial fish landed in 2005 was approximately \$109 million  
17 and the landing tax revenue to the state equaled only one percent  
18 or \$1 million.

19 (d) In order to more equitably distribute the financial burden  
20 on the commercial fishing industry and generate additional revenue  
21 to fund the regulation, management, and oversight of commercial  
22 fishing, it is the intent that a commercial landing fee in California  
23 should be established, based on the ex-vessel value of the fish, as  
24 done in Washington and Oregon.

25 SEC. 2. The heading of Article 7.5 (commencing with Section  
26 8040) of Chapter 1 of Part 3 of Division 6 of the Fish and Game  
27 Code is amended to read:

28  
29 Article 7.5. Landing Fees

30  
31 SEC. 3. Section 8040 of the Fish and Game Code is amended  
32 to read:

1     8040. The following definitions govern the construction of this  
2 article.

3     (a) “Commercial fisherman” means a person who has a valid,  
4 unrevoked commercial fishing license issued pursuant to Section  
5 7850.

6     (b) “Ex-vessel price” means the price paid for fish at the time  
7 the fish are delivered by the commercial fisherman to the fish  
8 receiver or processor as described in Section 8041.

9     (c) “Landing fee” means a fee imposed on a fish receiver or  
10 processor, as described in Section 8041, based on the ex-vessel  
11 price for fish.

12     SEC. 4. Section 8041 of the Fish and Game Code is amended  
13 to read:

14     8041. (a) The following persons shall pay the landing fee  
15 determined pursuant to Section 8042:

16     (1) Any person who is required to be licensed as a fish receiver,  
17 and any person who is licensed before January 1, 1987, as a  
18 wholesaler or a processor pursuant to former Section 8040 and  
19 who receives fish from commercial fishermen.

20     (2) Any commercial fisherman who sells fish to any person who  
21 is not a licensed fish receiver.

22     (b) Notwithstanding subdivision (a), a person licensed pursuant  
23 to Section 8460 who only takes, transports, or sells live freshwater  
24 fish for bait or a commercial fisherman who sells live freshwater  
25 fish for bait to such a licensed person, and a person licensed  
26 pursuant to Section 8033.1 who takes, transports, or sells live  
27 aquaria fish as described in Section 8597 or a commercial  
28 fisherman who sells live aquaria fish, are exempt from the landing  
29 fee imposed under this article. It is the intent of the Legislature  
30 that the license fee for live aquaria fish described in Section 8033.1  
31 shall be in lieu of a landing fee imposed under this article.

32     (c) Notwithstanding subdivision (a), a person who purchases,  
33 sells, takes, or receives live marine fish for use as live bait as  
34 described in subdivision (g) of Section 8030 is exempt from the  
35 landing fee imposed under this article.

36     SEC. 5. Section 8041.5 is added to the Fish and Game Code,  
37 to read:

38     8041.5. On or before January 1, 2012, the department shall  
39 report to the Joint Legislative Budget Committee and to the Joint  
40 Committee on Fisheries and Aquaculture all of the following:

(a) A summary of state regulations related to imported fish and shellfish products sold in the state that are not subject to the commercial landing fee imposed under this article, and an estimate of the department's annual costs to enforce those regulations.

(b) An estimate of the landing fee that would need to be assessed on imported fish and shellfish products sold in the state that are not subject to the commercial landing fee imposed under this article, to cover the department's costs identified in subdivision (a).

~~SEC. 6. Section 8042 of the Fish and Game Code is repealed.~~

*SEC. 6. Section 8042 of the Fish and Game Code is amended to read:*

8042. (a) The amount of the landing tax under this article shall be determined by multiplying the tax rate for the type of fish delivered by a commercial fisherman in this state in accordance with the schedule in Section 8051 by the number of pounds, or fraction thereof, delivered. If the tax is imposed based upon weight in the round, and the fish is cleaned, gutted, beheaded, or otherwise not in the round at the time of delivery, the taxes shall be adjusted by a conversion factor as determined by the department by regulation.

(b) *This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.*

SEC. 7. Section 8042 is added to the Fish and Game Code, to read:

8042. (a) The amount of the landing fee under this article shall be a percentage of the average ex-vessel price per pound for that species.

(b) The landing fee shall be set as follows:

(1) Beginning January 1, 2011, the percentage shall be 1 and one-half percent of the average ex-vessel price for any species of fish.

(2) Beginning January 1, 2013, the percentage shall be 3 percent of the average ex-vessel price for any species of fish.

(c) The commission shall establish the average ex-vessel price for each species of fish for the purpose of this section based on the prior year statewide average ex-vessel price.

(d) The revenue from commercial fishing landing fees imposed under this article shall be used by the department for the

1 commercial fishing program pursuant to this part and Part 1.7  
2 (commencing with Section 7050).

3 *(e) This section shall become operative on January 1, 2011.*

4 SEC. 8. Section 8047 of the Fish and Game Code is amended  
5 to read:

6 8047. (a) (1) A person licensed under Article 7 (commencing  
7 with Section 8030) who takes his or her own fish shall make a  
8 legible record in the form of the landing receipt as required by  
9 Sections 8043 and 8043.1 at the time the fish are brought ashore.  
10 The original signed copy of the landing receipt shall be delivered  
11 by the licensee to the department on or before the 16th day or the  
12 last day of the month in which the fish were landed, whichever  
13 date occurs first after landing. A copy of the landing receipt shall  
14 be retained by the licensee for a period of four years and shall be  
15 available for inspection at any time within that period by the  
16 department. A copy of the landing receipt shall be delivered to an  
17 agent authorized in writing by the majority of the persons who  
18 participated in the taking of the fish, excluding the commercial  
19 fisherman receiving the original copy.

20 (2) A person licensed under Section 8033.5 who sells his or her  
21 fish to a licensed receiver may use a transportation receipt to  
22 transport those fish only to that licensed receiver. The receiver  
23 shall complete a landing receipt for those fish. A person who sells  
24 his or her fish to the ultimate consumer shall complete a landing  
25 receipt pursuant to Sections 8043 and 8043.2. Transportation  
26 receipts shall be completed at the time the fish are transferred from  
27 the fishing vessel.

28 (b) Every commercial fisherman who sells fish taken from the  
29 waters of this state or brought into this state in fresh condition to  
30 persons not licensed to receive fish for commercial purposes  
31 pursuant to Article 7 (commencing with Section 8030) shall make  
32 a legible record in the form of the landing receipt required by  
33 Sections 8043 and 8043.1. Persons subject to Section 8043 shall  
34 remit the landing fee imposed by Section 8041. The person taking,  
35 purchasing, or receiving the fish, whether or not licensed under  
36 Article 7 (commencing with Section 8030), shall sign the landing  
37 receipt. The original signed copy of the landing receipt shall be  
38 delivered by the commercial fisherman to the department on or  
39 before the first and 16th day of each month. A copy of the landing  
40 receipt shall be retained by the commercial fisherman for a period

1 of four years and shall be available for inspection at any time within  
2 that period by the department. A copy of the landing receipt shall  
3 be retained by the person taking, purchasing, or receiving the fish  
4 until they are prepared for consumption or otherwise disposed of.  
5 A copy of the landing receipt shall be delivered to an agent  
6 authorized in writing by the majority of the persons who  
7 participated in the taking of the fish, excluding the commercial  
8 fisherman receiving the original copy.

9 (c) (1) Every commercial fisherman or his or her designee, who  
10 transports, causes to be transported, or delivers to another person  
11 for transportation, any fish, except herring, taken from the waters  
12 of this state or brought into this state in fresh condition, shall fill  
13 out a transportation receipt according to the instructions and on  
14 forms provided by the department at the time the fish are brought  
15 ashore.

16 (2) The original signed copy of the transportation receipt shall  
17 be delivered by the commercial fisherman to the department on  
18 or before the 16th day or the last day of the month in which the  
19 fish were landed, whichever date occurs first after landing. A copy  
20 of the transportation receipt shall be retained by the commercial  
21 fisherman who filled it out for a period of four years and shall be  
22 available for inspection at any time within that period by the  
23 department. A copy of the transportation receipt shall be given to  
24 and retained by the person transporting the fish until the fish are  
25 sold fresh, processed, or otherwise disposed of.

26 (3) The transportation receipt is required only for transit  
27 purposes.

28 (4) A person transporting fish from the point of first landing  
29 under a transportation receipt is not required to be licensed to  
30 conduct the activities of a fish receiver as described in Section  
31 8033.

32 (5) The transportation book receipt shall be issued to an  
33 individual fisherman and is not transferable.

34 (d) The transportation receipt shall contain all of the following  
35 information:

36 (1) The name of each species of fish, pursuant to Section 8045.

37 (2) The date and time of the receipt.

38 (3) The accurate weight of the species of fish being transported.

39 Sablefish may be reported in dressed weight, and if so reported,  
40 shall have the round weights computed, for purposes of

management quotas, by multiplying 1.6 times the reported dressed weight.

(4) The name and identification number of the fisherman. The signature of the fisherman authorizing transportation.

(5) The name of the person transporting the fish.

(6) The name of the fish business, the fish business identification number, and the corresponding landing receipt number issued by the fish business to the commercial fisherman.

(7) The department registration number of the vessel and the name of the vessel.

(8) The department origin block number where the fish were caught.

(9) The port of first landing.

(10) Any other information the department may prescribe.

(e) The numbered transportation receipt forms in each individual transportation receipt book shall be completed sequentially. A voided fish transportation receipt shall have the word "VOID" plainly and noticeably written on the face of the receipt. A voided fish transportation receipt shall be submitted to the department in the same manner as a completed fish transportation receipt is submitted to the department. A commercial fisherman who is no longer conducting business as a licensed fisherman shall forward all unused transportation receipts and transportation receipt books to the department immediately upon terminating his or her business activity.

~~SEC. 9.—Section 8051 of the Fish and Game Code is repealed.~~

*SEC. 9. Section 8051 of the Fish and Game Code is amended to read:*

8051. (a) The landing tax imposed pursuant to Section 8041 shall be determined pursuant to Section 8042 by using the tax rates in the following schedule:

	Rate per pound
(1) All fish, except as otherwise specified in this section .....	\$0.0013
(2) Mollusks and crustaceans, excluding squid and crab .....	.0125
(3) Crab .....	.0019
(4) Squid .....	.0019

1	(5) Salmon, based only on the weight in the round	.0500
2	(6) Lobster .....	.0125
3	(7) Abalone .....	.0125
4	(8) Anchovies .....	.0013
5	(9) Sardines .....	.0063
6	(10) Mackerel .....	.0013
7	(11) Halibut .....	.0125
8	(12) Angel shark, based only on the weight in the	
9	round .....	.0113
10	(13) Swordfish, based only on the weight in the	
11	round .....	.0125
12	(14) Thresher shark, based only on the weight in the	
13	round .....	.0113
14	(15) Bonito shark, based only on the weight in the	
15	round .....	.0113
16	(16) Herring .....	.0013
17	(17) Sea urchin .....	.0013
18	(18) The following fish:.....	.0125
19	Barracuda	
20	Flying fish	
21	Frogs	
22	Giant sea bass	
23	Saltwater worms	
24	White sea bass	
25	Yellowtail	
26		
27	<del>(b) This section shall become operative on January 1, 1994.</del>	
28	<i>(b) This section shall remain in effect only until January 1, 2011,</i>	
29	<i>and as of that date is repealed, unless a later enacted statute, that</i>	
30	<i>is enacted before January 1, 2011, deletes or extends that date.</i>	
31	SEC. 10. Section 8052 of the Fish and Game Code is amended	
32	to read:	
33	8052. Landing fees shall be used only for the administration	
34	of laws relating to the commercial fishing industry pursuant to this	
35	part and Part 1.7 (commencing with Section 7050), except as	
36	follows:	
37	(a) Not less than 90 percent of the landing fee on herring taken	
38	for roe shall be expended for research and management activities	
39	to maintain and enhance the herring resources within the waters	
40	of this state.	



1 (b) Not less than 90 percent of the landing fee on thresher shark  
2 or bonito (mako) shark shall be expended for the study required  
3 by, and for the costs of administering, Article 16 (commencing  
4 with Section 8560) of Chapter 2.

5 SEC. 11. Section 8053 of the Fish and Game Code is amended  
6 to read:

7 8053. (a) Landing fees imposed by this article shall be paid  
8 quarterly to the department within 30 days after the close of each  
9 quarter.

10 (b) If any landing fee is not paid within 30 days after the close  
11 of the quarter for which it is due, the department shall collect  
12 amounts owing under the procedures prescribed for sales and use  
13 taxes provided in Chapter 5 (commencing with Section 6451) and  
14 Chapter 6 (commencing with Section 6701) of Part 1 of Division  
15 2 of the Revenue and Taxation Code, insofar as they may be  
16 applicable, and for those purposes, “board” means the department  
17 and “the date on which the tax became due and payable” means  
18 that date 30 days after the close of the quarter for which it is due.

19 SEC. 12. Section 8055 of the Fish and Game Code is amended  
20 to read:

21 8055. All moneys received as a landing fee from persons who  
22 receive salmon from commercial fishermen under the provisions  
23 of this article shall be used only for the purpose of propagating  
24 salmon.

25 SEC. 13. Section 8057 of the Fish and Game Code is amended  
26 to read:

27 8057. If the department determines that any fee or penalty has  
28 been paid more than once or has been erroneously or illegally  
29 collected or computed, the department shall set forth that fact in  
30 the records of the department. The excess amount collected or paid  
31 shall be credited on any amounts then due and payable from the  
32 person under this part, and the balance shall be refunded to the  
33 person, or his successors, administrators, or executors.

34 SEC. 14. Section 8058 of the Fish and Game Code is amended  
35 to read:

36 8058. In the event of overpayment of any of the fees imposed  
37 by this article, the feepayer may file a claim for refund or a claim  
38 for credit with the department. No refund or credit shall be  
39 approved by the department unless the claim is filed with the

1 department within six months after the close of the calendar year  
2 in which the overpayment was made.

3 SEC. 15. Section 8059 of the Fish and Game Code is amended  
4 to read:

5 8059. Every claim for refund or credit for overpayment of a  
6 landing fee shall be in writing and shall state the specific grounds  
7 upon which the claim is founded.

8 SEC. 16. Section 8060 of the Fish and Game Code is amended  
9 to read:

10 8060. Failure to file a claim for refund or credit within the time  
11 prescribed in this article constitutes a waiver of any demand against  
12 the state on account of overpayment of a landing fee.

13 SEC. 17. Section 8061 of the Fish and Game Code is amended  
14 to read:

15 8061. Within 30 days after disallowing any claim for refund  
16 or credit for overpayment of a landing fee in whole or in part, the  
17 department shall serve notice of its action on the claimant, either  
18 personally or by mail. If served by mail, service shall be made  
19 pursuant to Section 1013 of the Code of Civil Procedure and shall  
20 be addressed to the licensee at his address as it appears in the  
21 records of the department, but the service shall be deemed complete  
22 at the time of the deposit of the notice in the mail without extension  
23 of time for any reason.

24 SEC. 18. Section 8062 of the Fish and Game Code is amended  
25 to read:

26 8062. Interest shall be paid upon any overpayment of a landing  
27 fee at the rate of one-half of 1 percent per month from the date of  
28 overpayment. The interest shall be paid to the date the claim for  
29 refund or credit is approved by the department.

30 SEC. 19. Section 8063 of the Fish and Game Code is amended  
31 to read:

32 8063. If the department determines that any overpayment of a  
33 landing fee has been made intentionally or by reason of  
34 carelessness, it shall not allow any interest thereon.

35 SEC. 20. Section 8064 of the Fish and Game Code is amended  
36 to read:

37 8064. No injunction or writ of mandate or other legal or  
38 equitable process shall issue in any suit, action, or proceeding in  
39 any court against this state or against any officer of the state to

1 prevent or enjoin the collection under this article of any landing  
2 fee.

3 SEC. 21. Section 8065 of the Fish and Game Code is amended  
4 to read:

5 8065. No suit or proceeding shall be maintained in any court  
6 for the recovery of any amount of landing fee alleged to have been  
7 erroneously paid or erroneously or illegally determined or collected  
8 unless a claim for refund or credit has been duly filed pursuant to  
9 Sections 8058 and 8059.

10 SEC. 22. Section 8067 of the Fish and Game Code is amended  
11 to read:

12 8067. If the department fails to mail notice of action on a claim  
13 for refund or credit for overpayment of a landing fee within six  
14 months after the claim is filed, the claimant may, prior to the  
15 mailing of notice by the department of its action on the claim,  
16 consider the claim disallowed and bring an action against the  
17 department on the grounds set forth in the claim for the recovery  
18 of the whole or any part of the amount claimed as an overpayment.

19 SEC. 23. Section 8068 of the Fish and Game Code is amended  
20 to read:

21 8068. If judgment is rendered for the plaintiff, the amount of  
22 the judgment shall first be credited on any landing fee due and  
23 payable from the plaintiff to the state under this article. The balance  
24 of the judgment shall be refunded to the plaintiff.

25 SEC. 24. Section 15003 of the Fish and Game Code is amended  
26 to read:

27 15003. (a) The department may assess a fee on persons  
28 growing aquaculture products on public lands and in public waters  
29 based on the price per pound of the products sold. The fees, if  
30 imposed, shall be set at amounts necessary to defray the costs of  
31 the commission and the department in administering this division.  
32 However, the fees if any, shall not exceed the rates as provided in  
33 Section 8042.

34 (b) The price per pound shall be based on the whole product  
35 weight or its equivalent as taken by the lessee.

36 (c) The fee imposed by this section shall be paid monthly to the  
37 department within 30 days after the close of each month. If not

- 1 paid within 60 days after the close of the month in which it is due,
- 2 a 10 percent penalty shall be paid.

O